

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF WASHINGTON

13  
14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 GARY A. GERMANY,

18 Defendant.

No. CR-08-0098-RHW

**ORDER DENYING MOTION FOR  
REDUCTION IN SENTENCE  
UNDER SECTION 3582(c)(2)**

19 Pending before the Court is the Defendant's Motion for Retroactive Application  
20 of the Sentencing Guidelines. On January 23, 2009, the Defendant pleaded guilty to  
21 three counts of distributing five or more grams of cocaine base. At the time of  
22 sentencing the Defendant had two prior drug-related felonies, and the Probation  
23 Department designated him a career offender under U.S.S.G. §4B1.1. Without  
24 objecting to this designation, the Defendant moved for a downward departure, arguing  
25 that his "criminal history category significantly over represent[ed] the seriousness of  
26 his past conduct." U.S.S.G. § 4A1.3(b)(1). The Court granted the motion and  
27 sentenced the Defendant to 70 months, a term within the guideline range that would  
28 have applied if he were not a career offender.

1 After reviewing the initial papers, the Court ordered supplemental briefing  
2 about two questions: (1) whether the Court has the authority to reduce the Defendant's  
3 sentence; and (2) whether the Defendant's history warrants a reduction. The Court  
4 need not decide the first, because it determines that the Defendant's lengthy juvenile,  
5 arrest, and criminal history does not justify a reduction. The Defendant's often violent  
6 history is troubling, about which he explained prior to sentencing that he had "to be  
7 more careful next time" when he goes about his "business," ostensibly in the drug  
8 trade. This suggests that the public would benefit from a significant term of  
9 imprisonment.

10 The Defendant, whose 70 month sentence is a substantial departure from the  
11 career offender range of 188 to 235 months, suggests only that the Court should not  
12 use his history as a reason to deny this motion, since it previously found that the  
13 career offender range was over-representative. But the Court may consider "the  
14 history and characteristics of the defendant" and the need to "protect the public from  
15 further crimes," and its decision that the Defendant's history did not warrant a 188  
16 month sentence does not now compel a conclusion that a 70 month sentence is  
17 inappropriate. *See* 18 U.S.C. § 3582(c)(2) (directing Court to consider Section 3553  
18 factors); 18 U.S.C. §§ 3553(a)(1), (2)(C).

19 The Defendant is to be commended for his accomplishments while in custody,  
20 like attaining his GED. Hopefully he can parlay those successes upon his release.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. The Defendant's Motion for Sentence Reduction (ECF No. 71) is **DENIED**.  
23 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
24 order and to provide copies to counsel.

25 **DATED** this 15<sup>th</sup> day of March, 2012.

26  
27 s/Robert H. Whaley  
28 ROBERT H. WHALEY  
United States District Judge